

1 COOLEY LLP
2 JOHN C. DWYER (136533) (dwyerjc@cooley.com)
3 PATRICK E. GIBBS (183174) (pgibbs@cooley.com)
4 SARAH M. LIGHTDALE (4395661) (slightdale@cooley.com)
5 CLAIRE A. MCCORMACK (241806) (cmccormack@cooley.com)
6 SAMANTHA A. KIRBY (307917) (skirby@cooley.com)
7 3175 Hanover Street
8 Palo Alto, CA 94304-1130
9 Telephone: (650) 843-5000
10 Facsimile: (650) 849-7400

11 Attorneys for Defendants
12 NVIDIA CORPORATION, JENSEN HUANG,
13 COLETTE M. KRESS, and JEFF FISHER

14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
OAKLAND DIVISION

In re NVIDIA CORPORATION
SECURITIES LITIGATION

This Document Relates to:

ALL ACTIONS

Case No. 4:18-cv-07669-HSG

**DEFENDANTS' REQUEST FOR JUDICIAL
NOTICE AND CONSIDERATION OF
DOCUMENTS INCORPORATED BY REFERENCE**

Date: October 31, 2019
Time: 2:00 p.m.
Judge: Hon. Haywood S. Gilliam, Jr.
Courtroom: 2

TABLE OF CONTENTS

	Page
I. THE COURT SHOULD DEEM THE DOCUMENTS PLAINTIFFS REFER TO AND RELY UPON TO BE INCORPORATED BY REFERENCE INTO THE COMPLAINT	1
II. THE COURT SHOULD TAKE JUDICIAL NOTICE OF ALL DOCUMENTS SUBMITTED BY DEFENDANTS.....	7
III. CHART OF DOCUMENTS SUBJECT TO THIS REQUEST	16
IV. CONCLUSION.....	18

TABLE OF AUTHORITIES

		Page(s)
1		
2		
3	Cases	
4	<i>Azar v. Yelp, Inc.</i> , No. 18-cv-00400-EMC, 2018 WL 6182756 (N.D. Cal. Nov. 27, 2018)	12, 14
5		
6	<i>Azul Pacifico, Inc. v. City of Los Angeles</i> , 948 F.2d 575 (9th Cir. 1991)	16
7		
8	<i>Carmel v. Mizuho Bank, Ltd.</i> , No. LA CV18-02483 JAK(Ex), 2018 WL 6981840 (C.D. Cal. Nov. 13, 2018)	9
9		
10	<i>Carson v. Experian Info. Sols., Inc.</i> , No. 8:17-cv-02232-JVS-KES, 2019 WL 3073993 (C.D. Cal. July 9, 2019)	9
11		
12	<i>City of Dearborn Heights Act 345 Police & Fire Ret. Sys. v. Align Tech., Inc.</i> , 856 F.3d 605 (9th Cir. 2017)	13
13		
14	<i>Costabile v. Natus Med. Inc.</i> , No. 17-CV-00458-JSW, 2018 WL 7134363	13
15		
16	<i>Daubert v. Merrell Dow Pharm., Inc.</i> , 509 U.S. 579 (1993)	16
17		
18	<i>Doyun Kim v. Advanced Micro Devices, Inc.</i> , No. 5:18-CV-00321-EJD, 2019 WL 2232545 (N.D. Cal. May 23, 2019)	14
19		
20	<i>In re Edward D. Jones & Co., L.P. Sec. Litig.</i> , No. 2:18-cv-00714-JAM-AC, 2019 WL 2994486 (E.D. Cal. July 9, 2019)	9
21		
22	<i>Glob. Apogee v. Sugarfina, Inc.</i> , No. CV 18-5162-RSWL-E, 2018 WL 4945305 (C.D. Cal. Oct. 10, 2018)	9
23		
24	<i>Heliotrope General, Inc. v. Ford Motor Co.</i> , 189 F.3d 971 (9th Cir. 1999)	9, 14
25		
26	<i>In re Infonet Servs. Corp. Sec. Litig.</i> , 310 F. Supp. 2d 1106 (C.D. Cal. 2003)	14
27		
28	<i>In re Intel Corp. Sec. Litig.</i> , No. 18-cv-00507-YGR, 2019 WL 1427660 (N.D. Cal. Mar. 29, 2019)	7
	<i>Khoja v. Orexigen Therapeutics, Inc.</i> , 899 F.3d 988 (9th Cir. 2018)	1, 2, 3, 8
	<i>Oaktree Principal Fund V, L.P. v. Warburg Pincus LLC</i> , No. CV 15-8574 PSG (MRWx), 2018 WL 6137169 (C.D. Cal. Aug. 29, 2018)	9

TABLE OF AUTHORITIES

	Page(s)
2	
3	Cases
4	<i>Oklahoma Firefighters Pension & Ret. Sys. v. Ixia</i> , No. CV 13-08440 MMM SHx, 2015 WL 1775221 (C.D. Cal. Apr. 14, 2015)
5	6
6	<i>Park v. GoPro, Inc.</i> , No. 18-cv-00193-EMC, 2019 WL 1231175 (N.D. Cal. Mar. 15, 2019)
7	3
8	<i>In re PetroChina Co. Ltd. Sec. Litig.</i> , 120 F. Supp. 3d 340 (S.D.N.Y. 2015).....
9	7
10	<i>Prodanova v. H.C. Wainwright & Co., LLC</i> , No. LA CV17-07926 JAK (ASx), 2018 WL 8017791 (C.D. Cal. Dec. 11, 2018).....8, 9, 14
11	12
12	<i>SEB Inv. Mgmt. AB v. Symantec Corp.</i> , No. C 18-02902 WHA, 2019 WL 2491935 (N.D. Cal. June 14, 2019).....14
13	14
14	<i>In re Silicon Graphics Inc. Sec. Litig.</i> , 183 F.3d 970 (9th Cir. 1999)
15	2
16	17
17	<i>In re SunPower Corp. Sec. Litig.</i> , No. 16-cv-04710-RS, 2018 WL 4904904 (N.D. Cal. Oct. 9, 2018).....5
18	19
19	<i>Tellabs, Inc. v. Makor Issues & Rights, Ltd.</i> , 551 U.S. 308 (2007).....1
20	21
21	<i>United States v. Ritchie</i> , 342 F.3d 903 (9th Cir. 2003)
22	1
23	<i>Von Saher v. Norton Simon Museum of Art at Pasadena</i> , 592 F.3d 954 (9th Cir. 2010)
	9
	7, 9
	1, 7, 16
	1

Other Authorities

Federal Rule of Evidence 201 1, 7, 16

1 NVIDIA Corporation, Jensen Huang, Colette Kress, and Jeff Fisher (“Defendants”) ask the
 2 Court to consider 33 documents in support of their Motion to Dismiss the Consolidated Class Action
 3 Complaint (the “Motion” and the “Complaint”), which are attached as Exhibits A – GG of the
 4 Declaration of Samantha A. Kirby. Most of those 33 documents—25 of them—are referenced so
 5 frequently in the Complaint that they are properly deemed incorporated in it by reference. Separately
 6 and independently, *all* of those 33 documents are judicially noticeable under Federal Rule of Evidence
 7 201. To put Defendants’ request in perspective, it should be noted that Plaintiffs’ own Complaint refers
 8 to and relies upon no fewer than 61 separate documents; in making their Motion, Defendants ask the
 9 Court to consider only about half of that number.

10 The Court’s consideration of these documents is crucial to its evaluation of Plaintiffs’
 11 Complaint. Some of these documents supply critical context for Defendants’ challenged statements
 12 that is omitted from the Complaint. Others demonstrate what information Defendants disclosed to the
 13 market during the proposed class period, and others yet show how the market understood NVIDIA’s
 14 disclosures. Consideration of these documents for any of these purposes is appropriate under both the
 15 incorporation by reference and judicial notice doctrines. A chart tracking the documents subject to this
 16 request and the bases for considering them follows at the end of the brief, and the exhibits attached to
 17 the Declaration of Samantha A. Kirby have been highlighted to show what portions of them
 18 Defendants ask the Court to consider.

19 **I. THE COURT SHOULD DEEM THE DOCUMENTS PLAINTIFFS REFER TO AND
 20 RELY UPON TO BE INCORPORATED BY REFERENCE INTO THE COMPLAINT**

21 Documents are deemed incorporated into a complaint “if the plaintiff refers extensively to the
 22 document or the document forms the basis of the plaintiff’s claims.” *United States v. Ritchie*, 342 F.3d
 23 903, 908 (9th Cir. 2003). The incorporation doctrine exists to “prevent[] plaintiffs from selecting only
 24 portions of documents that support their claims, while omitting portions of those very documents that
 25 weaken—or doom—their claims.” *Khoja v. Orexigen Therapeutics, Inc.*, 899 F.3d 988, 1002 (9th
 26 Cir. 2018). The Supreme Court has accordingly emphasized the importance of considering such
 27 documents in deciding motions to dismiss in securities class actions. *See Tellabs, Inc. v. Makor Issues
 28 & Rights, Ltd.*, 551 U.S. 308, 322 (2007) (“[C]ourts must consider the complaint in its entirety, as well

1 as other sources courts ordinarily examine when ruling on Rule 12(b)(6) motions to dismiss, in
 2 particular, documents incorporated into the complaint by reference, and matters of which a court may
 3 take judicial notice.”). “[A] court may assume an incorporated document’s contents are true for
 4 purposes of a motion to dismiss under Rule 12(b)(6).” *Khoja*, 899 F.3d at 1003 (internal punctuation
 5 omitted).

6 Plaintiffs cite to and rely upon 25 of the documents Defendants ask the Court to consider in
 7 deciding the Motion to Dismiss.¹ They fall into the following categories:

- 8 1. Documents containing Defendants’ statements that Plaintiffs allege were false and/or
 9 constituted corrective disclosures – Exhibits A, C, D, G, H, J, M, N, O, T, X, Y, AA, and BB;
- 10 2. Research reports published by securities and financial analysts at investment firms – Exhibits
 11 E, F, K, L, Q, R, S, and EE;
- 12 3. A Statement of Changes in Beneficial Ownership on Form 4, filed with the SEC on September
 13 8, 2017 – Exhibit I;
- 14 4. A list of NVIDIA’s historical stock trading prices during the proposed class period – Exhibit
 15 GG;
- 16 5. A list of the historical trading prices of the cryptocurrency Ether during the proposed class
 17 period, as well as during the three months immediately preceding and following that period –
 18 Exhibit FF.

19 **Documents Containing Alleged False Statements or Corrective Disclosures.** Plaintiffs
 20 allege that 14 documents contain false statements and/or corrective disclosures by Defendants. All 14
 21

22 ¹ Further, it bears note that Plaintiffs state in the second (unnumbered) paragraph of their Complaint
 23 that, “Lead Plaintiffs’ information and belief are based on the ongoing independent investigation of
 24 their undersigned counsel. This investigation includes review and analysis of, among other things: (i)
 25 NVIDIA’s public filings with the U.S. Securities and Exchange Commission (“SEC”); (ii) research
 26 reports by securities and financial analysts; (iii) videos and transcripts of NVIDIA’s conference calls
 27 with analysts and investors; (iv) Company presentations, press releases, and reports; (v) news and
 28 media reports concerning NVIDIA and other facts related to this action; (vi) price and volume data for
 NVIDIA securities . . .” With the exception of Ex. FF, *every document* that NVIDIA asks the Court
 to find incorporated by reference falls into these categories. When documents are relied on by a
 Complaint, they are incorporated into it by reference, and Plaintiffs should be taken at their word when
 they say their Complaint is “based on” these categories of documents. *See In re Silicon Graphics Inc.*
Sec. Litig., 183 F.3d 970, 986 (9th Cir. 1999) (SEC filings incorporated by reference in part because
 complaint “states that her allegations are based in part on a review of SGI’s SEC filings”).

1 of these documents are properly deemed incorporated into the Complaint by reference. *See, e.g.,*
 2 *Khoja*, 899 F.3d at 1005 (documents containing alleged false statements and corrective disclosures
 3 incorporated by reference); *Park v. GoPro, Inc.*, No. 18-cv-00193-EMC, 2019 WL 1231175, at *6
 4 (N.D. Cal. Mar. 15, 2019) (same). They are:

- 5 • Ex. A, a published transcript of NVIDIA’s Analyst/Investor Day Presentation held on May 10,
 6 2017. In paragraphs 36, 74, 104, and 149 of the Complaint, Plaintiffs allege that Ex. A contains
 7 a false or misleading statement. Defendants offer Ex. A so that the Court has the full context
 for the statement. *See Motion* at 22, 23.
- 8 • Ex. C, a published transcript of an earnings call held by NVIDIA on August 10, 2017 regarding
 9 the second quarter of its fiscal year 2018. In paragraphs 34, 77, 150, 151, and 180 of the
 10 Complaint, Plaintiffs allege that Ex. C contains false or misleading statements. Defendants
 11 offer Ex. C so that the Court has the full context for those statements, and to show what
 12 information NVIDIA disclosed to the public on that day. *See Motion* at 7, 8, 23, 25.
- 13 • Ex. D, an article published by *VentureBeat* on August 12, 2017 that contains an “edited
 14 transcript” of *VentureBeat*’s interview of NVIDIA CEO Huang. In paragraphs 77, 152, and
 15 153 of the Complaint, Plaintiffs allege that Ex. D contains false or misleading statements.
 16 Defendants offer Ex. D so that the Court has the full context for those statements. *See Motion* at 8, 23.
- 17 • Ex. G, NVIDIA’s quarterly report on Form 10-Q for the second quarter of its fiscal year 2018,
 18 filed with the SEC on August 23, 2017. In paragraphs 154 and 155 of the Complaint, Plaintiffs
 19 allege that Ex. G contains a false or misleading statement. Defendants offer Ex. G so that the
 20 Court has the full context for the statement. *See Motion* at 24.
- 21 • Ex. H, a published transcript of NVIDIA’s presentation from a conference hosted by Citigroup
 22 Global Markets Inc. on September 6, 2017. In paragraphs 69, 156, 157, and 181 of the
 23 Complaint, Plaintiffs allege that Ex. H contains a false or misleading statement. Defendants
 24 offer Ex. H so that the Court has the full context for the statement, and to show what information
 25 NVIDIA disclosed to the public on that day. *See Motion* at 8, 25.
- 26 • Ex. J, a published transcript of an earnings call held by NVIDIA on November 9, 2017
 27 regarding the third quarter of its fiscal year 2018. In paragraphs 69, 158, and 159 of the
 28 Complaint, Plaintiffs allege that Ex. J contains a false or misleading statement. Defendants
 offer Ex. J so that the Court has the full context for the statement and to show what information
 NVIDIA disclosed to the public on that day. *See Motion* at 9, 26, 33.
- 29 • Ex. M, an article published by *VentureBeat* on November 10, 2017 that contains an “edited
 30 transcript” of *VentureBeat*’s interview of NVIDIA CEO Huang. In paragraphs 15, 70, 77, 160,
 31 and 161 of the Complaint, Plaintiffs allege that Ex. M contains a false or misleading statement.
 32 Defendants offer Ex. M so that the Court has the full context for the statement and to show
 33 what information NVIDIA disclosed to the public on that day. *See Motion* at 9, 26.

- 1 • Ex. N, NVIDIA's quarterly report on Form 10-Q for the third quarter of its fiscal year 2018, filed with the SEC on November 21, 2017. In paragraphs 162 and 163 of the Complaint, Plaintiffs allege that Ex. N contains a false or misleading statement. Defendants offer Ex. N so that the Court has the full context for the statement. *See Motion at 24.*
- 2
- 3
- 4 • Ex. O, a published transcript of NVIDIA's presentation from a conference hosted by Credit Suisse AG on November 29, 2017. In paragraphs 15, 78, 164, 165, and 183 of the Complaint, Plaintiffs allege that Ex. O contains false or misleading statements. Defendants offer Ex. O so that the Court has the full context for those statements, to show what information NVIDIA disclosed to the public on that day, and for the fact that managing demand from cryptocurrency miners posed a challenge for NVIDIA. *See Motion at 6, 9, 27.*
- 5
- 6
- 7
- 8 • Ex. T, an article published by *Barron's* on February 9, 2018 that quotes a portion of an interview of NVIDIA CEO Huang. In paragraphs 71, 166, and 167 of the Complaint, Plaintiffs allege that Ex. T contains a false or misleading statement. Defendants offer Ex. T so that the Court has the full context for the statement. *See Motion at 10, 28.*
- 9
- 10
- 11 • Ex. X, an article published by *TechCrunch* on March 26, 2018 that paraphrases a portion of an interview of NVIDIA CEO Huang. In paragraphs 168 and 169 of the Complaint, Plaintiffs allege that Ex. X contains a false or misleading statement. Defendants offer Ex. X so that the Court has the full context for the statement. *See Motion at 11, 28, 29.*
- 12
- 13
- 14 • Ex. Y, a transcript of an interview of NVIDIA CEO Huang aired during the March 29, 2018 episode of the television program *Mad Money*. This transcript was prepared by Transperfect Legal Solutions on June 24, 2019. In paragraphs 72, 170, and 171 of the Complaint, Plaintiffs allege that Ex. Y contains false or misleading statements. Defendants offer Ex. Y so that the Court has the full context for those statements. *See Motion at 28, 29.*
- 15
- 16
- 17 • Ex. AA, a published transcript of an earnings call held by NVIDIA on August 16, 2018 regarding the second quarter of its fiscal year 2019. In paragraphs 21, 128, 131, 172, 173, and 180 of the Complaint, Plaintiffs allege that Ex. AA contains false or misleading statements as well as a corrective disclosure. Defendants offer Ex. AA so that the Court has the full context for those statements and a full view of the information that was disclosed to the market on that day, and for the fact that an end user could use a GPU to both play video games and mine cryptocurrency. *See Motion at 12, 13, 21, 29, 33.*
- 18
- 19
- 20
- 21
- 22 • Ex. BB, a published transcript of an earnings call held by NVIDIA on November 15, 2018 regarding the third quarter of its fiscal year 2019. In paragraphs 22, 133, 134, 136, 137, and 138 of the Complaint, Plaintiffs allege that Ex. BB contains a corrective disclosure. Defendants offer Ex. BB so that the Court has a full view of the information that was released to the market on that day, and for certain uncontested background facts about NVIDIA's business. *See Motion at 5, 13, 14, 17.*
- 23
- 24
- 25
- 26
- 27
- 28

Analyst Reports. Plaintiffs explicitly state that their Complaint relies on "research reports by securities and financial analysts," (AC p. 1), and their Complaint refers to 17 such specific analyst reports. (AC ¶¶ 23, 73, 75, 79, 132, 139, 140, 141, 142). In particular, Plaintiffs repeatedly refer to

1 and rely upon analyst reports when making allegations about how the market understood the
 2 statements made by Defendants that Plaintiffs claims were false or misleading, (AC ¶¶ 73, 75, 79,
 3 132), and to support an allegation that analysts did not attempt to estimate NVIDIA's quarterly or total
 4 cryptocurrency-driven revenue until after the proposed class period, (AC ¶ 118). Defendants therefore
 5 ask that the Court deem eight analyst reports incorporated into the Complaint by reference. *See In re*
 6 *SunPower Corp. Sec. Litig.*, No. 16-cv-04710-RS, 2018 WL 4904904, at *3 n.2 (N.D. Cal. Oct. 9,
 7 2018) (documents forming basis of plaintiffs' allegations incorporated by reference). These reports,
 8 which demonstrate that the market was aware that cryptocurrency miners were purchasing NVIDIA
 9 GPUs and that analysts regularly attempted to estimate revenue driven by such purchases during the
 10 proposed class period, are:

- 11 • Ex. E, an analyst report published by Cannacord Genuity Group, Inc. dated August 13, 2017.
 12 Defendants offer the report for the limited purpose of showing that the market was aware that
 13 cryptocurrency miners were purchasing a significant number of GeForce GPUs, as specifically
 14 reflected in the report's statement that, “[i]n addition to strong gaming sales, we believe new
 15 cryptocurrency demand added up to \$250M to the topline (\$150M in OEM revenue and
 16 another bit of upside in GeForce).” *See Motion at 8.* Defendants do not ask the Court to assume
 17 the truth of any of the facts in the report, only to note that Cannacord Genuity said what the
 18 report says.
- 19 • Ex. F, an analyst report published by Argus Research Company dated August 14, 2017.
 20 Defendants offer the report for the limited purpose of showing that the market was aware that
 21 cryptocurrency miners were purchasing a significant number of GeForce GPUs, as specifically
 22 reflected in the report's statement that “GPU sales were lifted by increased demand from
 23 mining [] Ethereum. The market is served both with a specialized board and via GeForce GTX
 24 boards.” *See Motion at 8.* Defendants do not ask the Court to assume the truth of any of the
 25 facts in the report, only to note that Argus said what the report says.
- 26 • Ex. K, an analyst report published by Deutsche Bank Securities Inc. dated November 9, 2017.
 27 Defendants offer the report for the limited purpose of showing that the market was aware that
 28 cryptocurrency miners were purchasing a significant number of GeForce GPUs, as specifically
 29 reflected in the report's statement that, “we estimate that crypto also benefited Gaming revs by
 30 ~\$100-150m.” *See Motion at 9.* Defendants do not ask the Court to assume the truth of any of the
 31 facts in the report, only to note that Deutsche Bank said what the report says.
- 32 • Ex. L, an analyst report published by Citigroup Global Markets Inc. dated November 10, 2017.
 33 Defendants offer the report for the limited purpose of showing that the market was aware that
 34 cryptocurrency miners were purchasing a significant number of GeForce GPUs, as specifically
 35 reflected in the report's statement that, “[w]e estimate NVDA saw ~5% or \$140M
 36 cryptocurrency sales in Oct-Q or down from ~11% or \$250M (OEM + gaming) in the Jul-Q.”
 37 *See Motion at 9.* Defendants do not ask the Court to assume the truth of any of the facts in the

1 report, only to note that Citigroup said what the report says.

- 2 • Ex. Q, an analyst report published by Deutsche Bank Securities Inc. dated February 8, 2018.
3 Defendants offer the report for the limited purpose of showing that the market was aware that
4 cryptocurrency miners were purchasing a significant number of GeForce GPUs, as specifically
5 reflected in the report's statement that, "DBe Gaming crypto revs ~\$300m." *See Motion at 10,*
6 *22, 28.* Defendants do not ask the Court to assume the truth of any of the facts in the report,
7 only to note that Deutsche Bank said what the report says.
- 8 • Ex. R, an analyst report published by Morgan Stanley Smith Barney LLC dated February 9,
9 2018. Defendants offer the report for the limited purpose of showing that the market was aware
10 that cryptocurrency miners were purchasing a significant number of GeForce GPUs, as
11 specifically reflected in the report's statement that, "we would estimate that there is north of
12 \$200 mm of GeForce sales that are now sold into cryptocurrency—but that's just an estimate
13 at this point." *See Motion at 10, 22, 28.* Defendants do not ask the Court to assume the truth
14 of any of the facts in the report, only to note that Morgan Stanley said what the report says.
- 15 • Ex. S, an analyst report published by Susquehanna Financial Group, LLLP dated February 9,
16 2018. Defendants offer the report for the limited purpose of showing that the market was aware
17 that cryptocurrency miners were purchasing a significant number of GeForce GPUs, as
18 specifically reflected in the report's statement that, "we believe the vast majority of Gaming
19 upside came from Ethereum-related GPU sales (we note \$400M of these sales in 4Q17)." *See*
20 *Motion at 10, 22, 28.* Defendants do not ask the Court to assume the truth of any of the facts
in the report, only to note that Susquehanna Financial Group said what the report says.
- 21 • Ex. EE, an analyst report published by RBC Capital Markets, LLC dated January 30, 2019. In
22 paragraphs 24, 25, 119, 120, 122, and 126 of the Complaint, Plaintiffs refer to Ex. EE to attempt
23 to support their allegations that Defendants made false or misleading statements. Defendants
24 offer the report for the limited purpose of showing that RBC attempted to estimate NVIDIA's
25 cryptocurrency-related revenue, and that its estimates vary wildly from the estimates attributed
26 in the Complaint to Plaintiffs' retained expert. *See Motion at 22.* Defendants do not ask the
27 Court to assume the truth of any of the facts in the report, only to note that RBC said what the
28 report says.

21 **Form 4.** Ex. I is a Statement of Changes in Beneficial Ownership on Form 4, filed with the
22 SEC on behalf of NVIDIA CEO Huang on September 8, 2017. In paragraph 186 of the Complaint,
23 Plaintiffs allege that Huang's September 6, 2017 sale of 110,000 shares of NVIDIA common stock,
24 reported on that Form 4, demonstrates Huang's scienter. Defendants offer Ex. I for the limited purpose
25 of showing that Huang held 22,570,398 shares of NVIDIA prior to that sale, and that the sale thus
26 constituted less than one-half of one percent of his holdings. *See Oklahoma Firefighters Pension &*
27 *Ret. Sys. v. Ixia*, No. CV 13-08440 MMM SHx, 2015 WL 1775221, at *15 (C.D. Cal. Apr. 14, 2015)
28 (collecting cases for the proposition that when a complaint refers to stock sales and has gleaned that

1 information from a Form 4, the Form 4 is incorporated by reference); Motion at 33.

2 **NVIDIA's Historical Stock Trading Prices.** Ex. GG is a chart of the daily historical trading
 3 prices of NVIDIA common stock from May 10, 2017 through November 14, 2018, as reported by
 4 Yahoo Finance. In paragraphs 21, 23, 129, 130, 143, 144, 145, 146, 185, 186, 189, 205, and 206 of
 5 the Complaint, Plaintiffs cite the historical stock prices of NVIDIA for various purposes, and the prices
 6 are therefore integral to, and properly deemed incorporated by reference into, the Complaint. *See In*
 7 *re PetroChina Co. Ltd. Sec. Litig.*, 120 F. Supp. 3d 340, 354 (S.D.N.Y. 2015) (stock price data
 8 incorporated by reference). Defendants offer Ex. GG for the limited purpose of showing that
 9 NVIDIA's peak stock closing price during the proposed class period, reached on October 1, 2018, was
 10 \$289.36. *See* Motion at 34.

11 **Ether's Historical Trading Prices.** Ex. FF is a chart of the daily historical trading prices of
 12 Ether, a cryptocurrency on the Ethereum network, from February 10, 2017 until February 14, 2019, as
 13 reported by Yahoo Finance. In paragraphs 9, 12, 20, 60, 64, 65, and 66 of the Complaint, Plaintiffs
 14 cite the historical prices of Ether for various purposes, and the prices are therefore integral to, and
 15 properly deemed incorporated by reference into, the Complaint for the same reason NVIDIA's
 16 historical stock trading prices are. Defendants offer Ex. FF for the limited purpose of showing the
 17 volatility of the price of Ether during and around the proposed class period. *See* Motion at 6, 8, 10,
 18 12.²

19 **II. THE COURT SHOULD TAKE JUDICIAL NOTICE OF ALL DOCUMENTS
 20 SUBMITTED BY DEFENDANTS**

21 Under Federal Rule of Evidence 201(b), a court may take judicial notice of "a fact that is not
 22 subject to reasonable dispute because it . . . can be accurately and readily determined from sources
 23 whose accuracy cannot reasonably be questioned." Courts routinely judicially notice documents in
 24 deciding motions to dismiss, especially in securities fraud cases. *See, e.g., In re Intel Corp. Sec. Litig.*,
 25 No. 18-cv-00507-YGR, 2019 WL 1427660, at *6 (N.D. Cal. Mar. 29, 2019). In particular, they
 26 frequently take judicial notice of documents either for the "purpose of determining what
 27 representations [a defendant] made to the market," *Wochos v. Tesla, Inc.*, No. 17-cv-05828-CRB, 2019

28 ² At page 6, the Motion also contains a graph of the price of Ether generated using the data from Ex.
 FF.

1 WL 1332395, at *1 (N.D. Cal. Mar. 25, 2019), or to identify what information “the market was aware
 2 of.” *Prodanova v. H.C. Wainwright & Co., LLC*, No. LA CV17-07926 JAK (ASx), 2018 WL 8017791,
 3 at *3 (C.D. Cal. Dec. 11, 2018).

4 The documents and facts that Defendants ask the Court to judicially notice fall into the
 5 following categories:

- 6 1. Transcripts of earnings calls, interviews, and corporate presentations by NVIDIA or its
 7 executives – Exhibits A, C, D, H, J, M, O, P, T, U, V, X, Y, Z, AA, BB, and CC;
- 8 2. NVIDIA’s public filings with the SEC – Exhibits B, G, I, N, W, and DD;
- 9 3. A list of NVIDIA’s historical stock trading prices during the proposed class period – Exhibit
 10 GG;
- 11 4. A list of the historical trading prices of the cryptocurrency Ether during the proposed class
 12 period, as well as during the three months immediately preceding and following that period –
 13 Exhibit FF;
- 14 5. Research reports published by securities and financial analysts at investment firms – Exhibits
 15 E, F, K, L, Q, R, S, and EE;
- 16 6. The economic law of supply and demand.

17 Judicial notice of each document submitted by Defendants is appropriate for the purposes of
 18 identifying what representations Defendants made to the market and what information the market was
 19 aware of. Critically, doing so does not require a court to determine whether what was said in any such
 20 document was true; it only requires a court to determine that it was said, and that the fact that it was
 21 said is not subject to reasonable dispute. While *Khoja* noted two limitations of the judicial notice
 22 doctrine—1) “a court cannot take judicial notice of disputed facts contained in such public records,”
 23 and 2) “[a] court must also consider—and identify—which fact or facts it is noticing from such a
 24 transcript,”—it did not expand or alter those limitations. 899 F.3d at 999 (emphasis added).
 25 Accordingly, district courts in the Ninth Circuit routinely hold, post-*Khoja*, that judicial notice is
 26 appropriate to determine what representations the defendant made to the market or what information
 27 was available in the marketplace. For example:

- In *Glob. Apogee v. Sugarfina, Inc.*, No. CV 18-5162-RSWL-E, 2018 WL 4945305, at *2 (C.D. Cal. Oct. 10, 2018), the court found that judicial notice of various news articles was appropriate for the purpose of “showing what information was in the public realm at that time.”
- In *In re Edward D. Jones & Co., L.P. Sec. Litig.*, No. 2:18-cv-00714-JAM-AC, 2019 WL 2994486, at *3 (E.D. Cal. July 9, 2019), the court took judicial notice of defendants’ “public comments and reports” for “the limited purpose of determining what information was disclosed to the public during the class period.”
- In *Oaktree Principal Fund V, L.P. v. Warburg Pincus LLC*, No. CV 15-8574 PSG (MRWx), 2018 WL 6137169, at *7–8 (C.D. Cal. Aug. 29, 2018), quoting *Von Saher v. Norton Simon Museum of Art at Pasadena*, 592 F.3d 954, 960 (9th Cir. 2010), the court held that, “[w]hen it comes to news reports, courts may take judicial notice of them to ‘indicate what was in the public realm at the time’” but not as evidence that “the contents of those articles were in fact true.”
- In *Wochos*, 2019 WL 1332395, at *2, the court took judicial notice of “documents that Tesla filed with the United States Securities and Exchange Commission [and] earnings conference call transcripts . . . for the sole purpose of determining what representations Tesla made to the market.”
- In *Carmel v. Mizuho Bank, Ltd.*, No. LA CV18-02483 JAK(Ex), 2018 WL 6981840, at *2 (C.D. Cal. Nov. 13, 2018), the court took judicial notice of “news articles” for the purpose of determining “what was in the public realm at the time.”
- In *Prodanova*, 2018 WL 8017791, at *3, quoting *Heliotrope General, Inc. v. Ford Motor Co.*, 189 F.3d 971, 981 n.18 (9th Cir. 1999), the court took judicial notice of various news articles because, “[i]t is appropriate to ‘take judicial notice that the market was aware of the information in news articles submitted by the defendants.’”
- Finally, in *Carson v. Experian Info. Sols., Inc.*, No. 8:17-cv-02232-JVS-KES, 2019 WL 3073993, at *2 (C.D. Cal. July 9, 2019), the court held that, “[a] Court may take judicial notice of publications to indicate what was in the public realm at the time.”

Transcripts of Earnings Calls, Interviews, and Corporate Presentations by NVIDIA or Its Executives. With minor exceptions identified below, Defendants do not ask that the Court take judicial notice of transcripts of NVIDIA’s earnings calls, interviews, and corporate presentations for their truth. Defendants instead ask that the Court take judicial notice of these documents for “the limited purpose of determining what information was disclosed to the public during the class period,” *In re Edward D. Jones*, 2019 WL 2994486, at *3, including the context for statements that Plaintiffs allege to have been false or misleading. As the above cases show, such judicial notice is routine and uncontroversial. To the extremely limited extent NVIDIA does ask the Court to consider the

1 documents for their truth, they are either incorporated by reference (as discussed above) or offered
 2 solely for uncontested background facts about NVIDIA's business. The transcripts of earnings calls,
 3 interviews, and corporate presentations Defendants ask the Court to judicially notice are:

- 4 • Ex. A, a published transcript of NVIDIA's Analyst/Investor Day Presentation held on May 10,
 5 2017. In paragraphs 36, 74, 104, and 149 of the Complaint, Plaintiffs allege that Ex. A contains
 6 a false or misleading statement. Defendants offer Ex. A so that the Court has the full context
 7 for the statement. *See Motion* at 22, 23. As noted above, Ex. A is also incorporated into the
 8 Complaint by reference.
- 9 • Ex. C, a published transcript of an earnings call held by NVIDIA on August 10, 2017 regarding
 10 the second quarter of its fiscal year 2018. In paragraphs 34, 77, 150, 151, and 180 of the
 11 Complaint, Plaintiffs allege that Ex. C contains false or misleading statements. Defendants
 12 offer Ex. C so that the Court has the full context for those statements, and to show what
 13 information NVIDIA disclosed to the public on that day, but not for the truth of that
 14 information. *See Motion* at 7, 8, 23, 25. As noted above, Ex. C is also incorporated into the
 15 Complaint by reference.
- 16 • Ex. D, an article published by *VentureBeat* on August 12, 2017 that contains an "edited
 17 transcript" of *VentureBeat*'s interview of NVIDIA CEO Huang. In paragraphs 77, 152, and
 18 153 of the Complaint, Plaintiffs allege that Ex. D contains false or misleading statements.
 19 Defendants offer Ex. D so that the Court has the full context for those statements. *See Motion*
 20 at 8, 23. As noted above, Ex. D is also incorporated into the Complaint by reference.
- 21 • Ex. H, a published transcript of NVIDIA's presentation from a conference hosted by Citigroup
 22 Global Markets Inc. on September 6, 2017. In paragraphs 69, 156, 157, and 181 of the
 23 Complaint, Plaintiffs allege that Ex. H contains a false or misleading statement. Defendants
 24 offer Ex. H so that the Court has the full context for the statement and to show what information
 25 NVIDIA disclosed to the public on that day, but not for the truth of that information. *See Motion*
 26 at 8, 25. As noted above, Ex. H is also incorporated into the Complaint by reference.
- 27 • Ex. J, a published transcript of an earnings call held by NVIDIA on November 9, 2017
 28 regarding the third quarter of its fiscal year 2018. In paragraphs 69, 158, and 159 of the
 Complaint, Plaintiffs allege that Ex. J contains a false or misleading statement. Defendants
 offer Ex. J so that the Court has the full context for the statement and to show what information
 NVIDIA disclosed to the public on that day, but not for the truth of that information. *See Motion*
 at 9, 26, 33. As noted above, Ex. J is also incorporated into the Complaint by reference.
- 29 • Ex. M, an article published by *VentureBeat* on November 10, 2017 that contains an "edited
 30 transcript" of *VentureBeat*'s interview of NVIDIA CEO Huang. In paragraphs 15, 70, 77, 160,
 31 and 161 of the Complaint, Plaintiffs allege that Ex. M contains a false or misleading statement.
 32 Defendants offer Ex. M so that the Court has the full context for the statement and to show
 33 what information NVIDIA disclosed to the public on that day, but not for the truth of that
 34 information. *See Motion* at 9, 26. As noted above, Ex. M is also incorporated into the
 35 Complaint by reference.

- Ex. O, a published transcript of NVIDIA's presentation from a conference hosted by Credit Suisse AG on November 29, 2017. In paragraphs 15, 78, 164, 165, and 183 of the Complaint, Plaintiffs allege that Ex. O contains false or misleading statements. Defendants offer Ex. O so that the Court has the full context for those statements and to show what information NVIDIA disclosed to the public on that day, but not generally for the truth of that information. See Motion at 6, 9, 27. As noted above, Ex. O is also incorporated into the Complaint by reference, and Defendants offer the fact that cryptocurrency posed a challenge for NVIDIA for its truth. *Id.*
- Ex. P, a published transcript of an earnings call held by NVIDIA on February 8, 2018 regarding the fourth quarter of its fiscal year 2018. Defendants offer Ex. P to show what information NVIDIA disclosed to the public on that day, but not for the truth of that information, except for certain uncontested background facts about NVIDIA's business. *See Motion at 5, 10, 11, 17, 28, 33.*
- Ex. T, an article published by *Barron's* on February 9, 2018 that quotes a portion of an interview with NVIDIA CEO Huang. In paragraphs 71, 166, and 167 of the Complaint, Plaintiffs allege that Ex. T contains a false or misleading statement. Defendants offer Ex. T so that the Court has the full context for the statement. *See Motion at 10, 28.* As noted above, Ex. T is also incorporated into the Complaint by reference.
- Ex. U, a published transcript of NVIDIA's presentation from a conference hosted by Goldman Sachs Group Inc. on February 13, 2018. Defendants offer Ex. U to show what information NVIDIA disclosed to the public on that day, but not for the truth of that information. *See Motion at 10, 21.*
- Ex. V, a published transcript of NVIDIA's presentation from a conference hosted by Morgan Stanley Smith Barney LLC on February 26, 2018. Defendants offer Ex. V to show what information NVIDIA disclosed to the public on that day, but not for the truth of that information. *See Motion at 5, 11.*
- Ex. X, an article published by *TechCrunch* on March 26, 2018 that paraphrases a portion of an interview with NVIDIA CEO Huang. In paragraphs 168 and 169 of the Complaint, Plaintiffs allege that Ex. X contains a false or misleading statement. Defendants offer Ex. X so that the Court has the full context for the statement. *See Motion at 11, 28, 29.* As noted above, Ex. X is also incorporated into the Complaint by reference.
- Ex. Y, a transcript of an interview of NVIDIA CEO Huang aired during the March 29, 2018 episode of the television program *Mad Money*. This transcript was prepared by Transperfect Legal Solutions on June 24, 2019. In paragraphs 72, 170, and 171 of the Complaint, Plaintiffs allege that Ex. Y contains false or misleading statements. Defendants offer Ex. Y so that the Court has the full context for those statements. *See Motion at 28, 29.* As noted above, Ex. Y is also incorporated into the Complaint by reference.
- Ex. Z, a published transcript of an earnings call held by NVIDIA on May 10, 2018 regarding the first quarter of its fiscal year 2019. Defendants offer Ex. Z to show what information NVIDIA disclosed to the public on that day, but generally not for the truth of that information,

1 except for certain uncontested background facts about NVIDIA's business. *See Motion at 5,*
 2 12, 17.

- 3 • Ex. AA, a published transcript of an earnings call held by NVIDIA on August 16, 2018
 4 regarding the second quarter of its fiscal 2019. In paragraphs 21, 128, 131, 172, 173, and 180
 5 of the Complaint, Plaintiffs allege that Ex. AA contains false or misleading statements as well
 6 as a corrective disclosure. Defendants offer Ex. AA so that the Court has the full context for
 7 those statements and a full view of what information was released to the market on that day,
 8 but generally not for the truth of that information, except for the fact that an end user could use
 9 a GPU to both play video games and mine cryptocurrency. *See Motion at 12, 13, 21, 29, 33.*
 10 As noted above, Ex. AA is also incorporated into the Complaint by reference.
- 11 • Ex. BB, a published transcript of an earnings call held by NVIDIA on November 15, 2018
 12 regarding the third quarter of its fiscal year 2019. In paragraphs 22, 133, 134, 136, 137, and
 13 138 of the Complaint, Plaintiffs allege that Ex. BB contains a corrective disclosure. Defendants
 14 offer Ex. BB so that the Court has a full view of the information that was released to the market
 15 on that day, but generally not for the truth of that information, except for certain uncontested
 16 background facts about NVIDIA's business. *See Motion at 5, 13, 14, 17.*
- 17 • Ex. CC, a press release published by NVIDIA on November 15, 2018 regarding the Company's
 18 reported earnings for the third quarter of its fiscal year 2019. Defendants offer Ex. CC to show
 19 what information NVIDIA disclosed to the public on that day, but not for the truth of that
 20 information. *See Motion at 14.*

21 **NVIDIA's Public Filings With the SEC.** With limited exceptions, Defendants ask that the
 22 Court take judicial notice of NVIDIA's public SEC filings for the same purposes, and that judicial
 23 notice is likewise routine and uncontroversial. The only instances where Defendants seek to bring in
 24 public filings for their truth (other than uncontested background facts about NVIDIA's business) are:
 25 1) Ex. I, a Form 4 showing Defendant Huang's total ownership of NVIDIA stock, which reveals that
 26 his stock sale represented less than one-half of one percent of his holdings; and 2) Exs. B and DD,
 27 NVIDIA quarterly reports on Form 10-Qs showing that NVIDIA repurchased ten million shares of its
 28 own stock during the class period, negating an inference of scienter. In a post-*Khoja* decision, Judge
 Chen analyzed in detail the question of whether such a Form 4 should be judicially noticed for its
 truth, and he concluded that it should be. *Azar v. Yelp, Inc.*, No. 18-cv-00400-EMC, 2018 WL
 6182756, at *4 (N.D. Cal. Nov. 27, 2018) ("Courts in this circuit have routinely taken judicial notice
 of Forms 4 to determine whether insider stock sales raise an inference of scienter to support a § 10(b)
 action.").³ The same logic applies to the Form 10-Qs—they should be judicially noticed for their truth

29 ³ The Court could alternatively either find that the document was incorporated by reference, *see supra*

1 to the extent they show NVIDIA's stock repurchase program, which is relevant to whether Plaintiffs
 2 have pleaded the requisite strong inference of scienter. *See also Costabile v. Natus Med. Inc.*, No. 17-
 3 CV-00458-JSW, 2018 WL 7134363, at *5 n.2 and n.5 (N.D. Cal. Dec. 18, 2018) (holding, after
 4 judicially noticing SEC filings, that "stock repurchase programs, such as Natus's, negate a finding of
 5 scienter"). The public filings by NVIDIA with the SEC that Defendants ask the Court to judicially
 6 notice are:

- 7 • Ex. B, NVIDIA's quarterly report on Form 10-Q for the first quarter of its fiscal year 2018,
 filed with the SEC on May 23, 2017. Defendants offer Ex. B for the fact of NVIDIA's stock
 8 repurchase program. *See Motion at 34.*
- 9 • Ex. G, NVIDIA's quarterly report on Form 10-Q for the second quarter of its fiscal year 2018,
 filed with the SEC on August 23, 2017. In paragraphs 154 and 155 of the Complaint, Plaintiffs
 10 allege that Ex. G contains a false or misleading statement. Defendants offer Ex. G so that the
 11 Court has the full context for the statement. *See Motion at 24.* As noted above, Ex. G is also
 incorporated into the Complaint by reference.
- 12 • Ex. I, a Statement of Changes in Beneficial Ownership on Form 4 filed with the SEC on behalf
 13 of NVIDIA CEO Huang on September 8, 2017. Defendants offer Ex. I for the fact that Huang
 14 held 22,570,398 shares of NVIDIA stock prior to the sale reported on that Form 4, and that the
 15 sale thus represented less than one-half of one percent of his NVIDIA stockholdings. *See Motion at 33.*
- 16 • Ex. N, NVIDIA's quarterly report on Form 10-Q for the third quarter of its fiscal year 2018,
 filed with the SEC on November 21, 2017. In paragraphs 162 and 163 of the Complaint,
 17 Plaintiffs allege that Ex. N contains a false or misleading statement. Defendants offer Ex. N so
 18 that the Court has the full context for the statement. *See Motion at 24.* As noted above, Ex. N
 is also incorporated into the Complaint by reference.
- 19 • Ex. W, NVIDIA's annual report on Form 10-K for its fiscal year 2018, filed with the SEC on
 20 February 28, 2018. Defendants offer Ex. W to show what information NVIDIA disclosed to
 21 the public on that day, but generally not for the truth of that information, except for certain
 22 uncontested background facts about NVIDIA's business. *See Motion at 4, 5, 7, 11, 33.*
- 23 • Ex. DD, NVIDIA's quarterly report on Form 10-Q for the third quarter of its fiscal year 2019,
 filed with the SEC on November 15, 2018. Defendants offer Ex. DD for the fact of NVIDIA's
 24 stock repurchase program. *See Motion at 34.*

25 **NVIDIA's Historical Stock Trading Prices.** Ex. GG is a chart of the daily historical trading
 26 prices of NVIDIA stock from May 10, 2017 until November 14, 2018, as reported by Yahoo Finance.
 27

28 at 6, or that Plaintiffs' failure to allege the magnitude of the sale in the context of Huang's total stock
 ownership means that the stock-sale allegation should be disregarded altogether. *Cf. City of Dearborn*
Heights Act 345 Police & Fire Ret. Sys. v. Align Tech., Inc., 856 F.3d 605, 621 (9th Cir. 2017) (failure
 "to allege the precise amount of shares sold, the timing of these sales, and the prior trading history for
 either individual" defeats inference of scienter for stock sale).

1 Judicial notice of historical stock prices is regularly taken in securities fraud cases. *See, e.g., SEB Inv.*
 2 *Mgmt. AB v. Symantec Corp.*, No. C 18-02902 WHA, 2019 WL 2491935, at *11 (N.D. Cal. June 14,
 3 2019); *Doyun Kim v. Advanced Micro Devices, Inc.*, No. 5:18-CV-00321-EJD, 2019 WL 2232545, at
 4 *5 (N.D. Cal. May 23, 2019); *Azar*, 2018 WL 6182756, at *4. As noted above, Ex. GG is also
 5 incorporated into the Complaint by reference.

6 **Ether's Historical Trading Prices.** Ex. FF is a chart of the daily historical trading prices of
 7 Ether, a cryptocurrency on the Ethereum network, from February 10, 2017 until February 14, 2019, as
 8 reported by Yahoo Finance. Judicial notice of this information is appropriate for the same reason
 9 judicial notice of NVIDIA's stock price information is. As noted above, Ex. FF is also incorporated
 10 into the Complaint by reference.

11 **Analyst Reports.** Defendants ask the Court to take judicial notice of eight analyst reports.
 12 Defendants do not ask the Court to take judicial notice that any of the facts in any of these analyst
 13 reports are true. Instead, Defendants simply ask that the Court take judicial notice of the analyst reports
 14 for the limited purpose of determining ““that the market was aware”” that cryptocurrency miners were
 15 purchasing GeForce GPUs, and the above-cited cases show that the Court may judicially notice them
 16 for that purpose. *See, e.g., Prodanova*, 2018 WL 8017791, at *3 quoting *Heliotrope*, 189 F.3d at 981
 17 n.18. Moreover, as noted above, these reports are “comparable in form and content to the numerous
 18 reports that Plaintiffs heavily quote in the Complaint” and “[a]s Plaintiffs rely heavily on such analysts'
 19 reports to state their claims, they can hardly complain when [Defendants] refer to the same information
 20 in their defense.” *In re Infonet Servs. Corp. Sec. Litig.*, 310 F. Supp. 2d 1106, 1116 n.10 (C.D. Cal.
 21 2003) (judicially noticing analyst reports). The analyst reports Defendants ask the Court to judicially
 22 notice are:

23

- 24 • Ex. E, an analyst report published by Cannacord Genuity Group Inc. dated August 13, 2017.
 25 Defendants offer the report for the limited purpose of showing that the market was aware that
 26 cryptocurrency miners were purchasing a significant number of GeForce GPUs, as specifically
 27 reflected in the report's statement that, “[i]n addition to strong gaming sales, we believe new
 28 cryptocurrency demand added up to \$250M to the topline (\$150M in OEM revenue and
 another bit of upside in GeForce).” *See* Motion at 8. Defendants do not ask the Court to assume
 the truth of any of the facts in the report, only to note that Cannacord Genuity said what the
 report says. As noted above, Ex. E is also incorporated into the Complaint by reference.

- 1 • Ex. F, an analyst report published by Argus Research Company dated August 14, 2017.
2 Defendants offer the report for the limited purpose of showing that the market was aware that
3 cryptocurrency miners were purchasing a significant number of GeForce GPUs, as specifically
4 reflected in the report's statement that "GPU sales were lifted by increased demand from
5 mining [] Ethereum. The market is served both with a specialized board and via GeForce GTX
6 boards." *See Motion at 8.* Defendants do not ask the Court to assume the truth of any of the
7 facts in the report, only to note that Argus said what the report says. As noted above, Ex. F is
8 also incorporated into the Complaint by reference.
- 9 • Ex. K, an analyst report published by Deutsche Bank Securities Inc. dated November 9, 2017.
10 Defendants offer the report for the limited purpose of showing that the market was aware that
11 cryptocurrency miners were purchasing a significant number of GeForce GPUs, as specifically
12 reflected in the report's statement that, "we estimate that crypto also benefited Gaming revs by
13 ~\$100-150m." *See Motion at 9.* Defendants do not ask the Court to assume the truth of any of the
14 facts in the report, only to note that Deutsche Bank said what the report says. As noted above, Ex. K is also
15 incorporated into the Complaint by reference.
- 16 • Ex. L, an analyst report published by Citigroup Global Markets Inc. dated November 10, 2017.
17 Defendants offer the report for the limited purpose of showing that the market was aware that
18 cryptocurrency miners were purchasing a significant number of GeForce GPUs, as specifically
19 reflected in the report's statement that, "[w]e estimate NVDA saw ~5% or \$140M
20 cryptocurrency sales in Oct-Q or down from ~11% or \$250M (OEM + gaming) in the Jul-Q.". *See Motion at 9.* Defendants do not ask the Court to assume the truth of any of the facts in the
21 report, only to note that Citigroup said what the report says. As noted above, Ex. L is also
22 incorporated into the Complaint by reference.
- 23 • Ex. Q, an analyst report published by Deutsche Bank Securities Inc. dated February 8, 2018.
24 Defendants offer the report for the limited purpose of showing that the market was aware that
25 cryptocurrency miners were purchasing a significant number of GeForce GPUs, as specifically
26 reflected in the report's statement that, "DBe Gaming crypto revs ~\$300m." *See Motion at 10,*
27 22, 28. Defendants do not ask the Court to assume the truth of any of the facts in the report,
28 only to note that Deutsche Bank said what the report says. As noted above, Ex. Q is also
 incorporated into the Complaint by reference.
- 29 • Ex. R, an analyst report published by Morgan Stanley Smith Barney LLC dated February 9,
30 2018. Defendants offer the report for the limited purpose of showing that the market was aware
31 that cryptocurrency miners were purchasing a significant number of GeForce GPUs, as
32 specifically reflected in the report's statement that, "we would estimate that there is north of
33 \$200 mm of GeForce sales that are now sold into cryptocurrency—but that's just an estimate
34 at this point." *See Motion at 10, 22, 28.* Defendants do not ask the Court to assume the truth
35 of any of the facts in the report, only to note that Morgan Stanley said what the report says. As
36 noted above, Ex. R is also incorporated into the Complaint by reference.
- 37 • Ex. S, an analyst report published by Susquehanna Financial Group, LLLP dated February 9,
38 2018. Defendants offer the report for the limited purpose of showing that the market was aware
39 that cryptocurrency miners were purchasing a significant number of GeForce GPUs, as
40 specifically reflected in the report's statement that, "we believe the vast majority of Gaming

1 upside came from Ethereum-related GPU sales (we note \$400M of these sales in 4Q17.” *See*
 2 Motion at 10, 22, 28. Defendants do not ask the Court to assume the truth of any of the facts
 3 in the report, only to note that Susquehanna Financial Group said what the report says. As
 noted above, Ex. S is also incorporated into the Complaint by reference.

4

- 5 Ex. EE, an analyst report published by RBC Capital Markets, LLC dated January 30, 2019.
 6 Defendants offer the report for the limited purpose of showing that RBC attempted to estimate
 7 NVIDIA’s cryptocurrency-related revenue, and that its estimates vary wildly from the
 8 estimates attributed in the Complaint to Plaintiffs’ own expert. *See* Motion at 22. Defendants
 9 do not ask the Court to assume the truth of any of the facts in the report, only to note that RBC
 10 said what the report says. As noted above, Ex. EE is also incorporated into the Complaint by
 11 reference.

12

13 **Economic Theory.** “[T]heories that are so firmly established as to have attained the status of
 14 scientific law, such as the laws of thermodynamics, properly are subject to judicial notice under
 15 Federal Rule of Evidence 201.” *Daubert v. Merrell Dow Pharm., Inc.*, 509 U.S. 579, 593 n.11 (1993).
 16 Defendants therefore ask the Court to take judicial notice of the economic law of supply and demand.
 17 *Cf. Azul Pacifico, Inc. v. City of Los Angeles*, 948 F.2d 575, 582 (9th Cir. 1991) (referring to “the law
 18 of supply and demand”). In particular, Defendants ask the Court to judicially notice that when supply
 19 increases and all other things remain equal, the cost of each unit will decrease.

20 **III. CHART OF DOCUMENTS SUBJECT TO THIS REQUEST⁴**

Ex.	Date	Description	Basis	¶¶
A	5/10/2017	NVIDIA Analyst/Investor Day Presentation	JN; IBR	36, 74, 104, 149
B	5/23/2017	NVIDIA Form 10-Q—1Q 2018	JN	--
C	8/10/2017	NVIDIA Earnings Call—2Q 2018	JN; IBR	34, 77, 150, 151, 180
D	8/12/2017	<i>VentureBeat</i> Article	JN; IBR	77, 152, 153
E	8/13/2017	Analyst report by Cannacord	JN; IBR	--
F	8/14/2017	Analyst report by Argus	JN; IBR	--
G	8/23/2017	NVIDIA Form 10-Q—2Q 2018	JN; IBR	154, 155

21

22

23

24

25

26

27

28

⁴ “Ex.” refers to the exhibits to the Declaration of Samantha A. Kirby. “Basis” refers to the reason the document should be considered: either incorporated by reference (“IBR”) or judicially noticed (“JN”). “¶¶” refers to the paragraphs of the Complaint that cite the document.

1	H	9/6/2017	NVIDIA Presentation—Citigroup Conference	JN; IBR	69, 156, 157, 181
2	I	9/8/2017	Form 4	JN; IBR	186
3	J	11/9/2017	NVIDIA Earnings Call—3Q 2018	JN; IBR	69, 158, 159
4	K	11/9/2017	Analyst report by Deutsche Bank	JN; IBR	--
5	L	11/10/2017	Analyst report by Citigroup	JN; IBR	--
6	M	11/10/2017	<i>VentureBeat</i> Article	JN; IBR	15, 70, 77, 160, 161
7	N	11/21/2017	NVIDIA Form 10-Q—3Q 2018	JN; IBR	162, 163
8	O	11/29/2017	NVIDIA Presentation—Credit Suisse Conference	JN; IBR	15, 78, 164, 165, 183
9	P	2/8/2018	NVIDIA Earnings Call—4Q 2018	JN	--
10	Q	2/8/2018	Analyst report by Deutsche Bank	JN; IBR	--
11	R	2/9/2018	Analyst report by Morgan Stanley	JN; IBR	--
12	S	2/9/2018	Analyst report by SIG Analysis	JN; IBR	--
13	T	2/9/2018	<i>Barron's</i> Article	JN; IBR	71, 166, 167
14	U	2/13/2018	NVIDIA Presentation—Goldman Sachs Conference	JN	--
15	V	2/26/2018	NVIDIA Presentation—Morgan Stanley Conference	JN	183
16	W	2/28/2018	NVIDIA Form 10-K—2018	JN	--
17	X	3/26/2018	<i>TechCrunch</i> Article	JN; IBR	168, 169
18	Y	3/29/2018	<i>Mad Money</i> Transcript	JN; IBR	72, 170, 171
19	Z	5/10/2018	NVIDIA Earnings Call—1Q 2019	JN	--
20	AA	8/16/2018	NVIDIA Earnings Call—2Q 2019	JN; IBR	21, 128, 131, 172, 173, 180
21	BB	11/15/2018	NVIDIA Earnings Call—3Q 2019	JN; IBR	22, 133, 134, 136, 137, 138

1	CC	11/15/2018	NVIDIA Press Release	JN	--
2	DD	11/15/2018	NVIDIA Form 10-Q—3Q 2019	JN	--
3	EE	1/30/2019	Analyst report by RBC	JN; IBR	24, 25, 119, 120, 122, 126
4	FF	N/A	Ether trading prices from 2/10/2017 through 2/14/2019	JN; IBR	9, 12, 20, 60, 64, 65, 66
5	GG	N/A	NVIDIA stock prices from 5/10/2017 through 11/14/2018	JN; IBR	21, 23, 129, 130, 143, 144, 145, 146, 185, 186, 189, 205, 206

IV. CONCLUSION

For the foregoing reasons, the Court should consider all the Exhibits to the Declaration of Samantha A. Kirby in deciding Defendants' Motion to Dismiss.

Dated: August 2, 2019 COOLEY LLP

/s/ John C. Dwyer
John C. Dwyer (136533)

Attorneys for Defendants NVIDIA Corporation,
Jensen Huang, Colette Kress, and Jeff Fisher